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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Local Exchange Carriers' Rates)
Terms, and Conditions for) CC Docket No. 93-162
Expanded Interconnection for)
Special Access)

SUPPLEMENTAL DIRECT CASE

To: Chief, Common Carrier Bureau

Bell Atlantic¹ respectfully submits this Supplemental Direct Case in support of tariffs for expanded special access interconnection.² The Common Carrier Bureau ("Bureau") directed Bell Atlantic to respond to several questions relating to the rates proposed for preparation of central office space for physical collocation.³

¹ The Bell Atlantic Telephone Companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² The U.S. Court of Appeals for the District of Columbia Circuit recently vacated the Commission's orders that mandated physical collocation. *Bell Atlantic v. FCC*, No. 92-1619 (June 10, 1994). Bell Atlantic respectfully reserves the right, once the court issues its mandate, to take the position that these proceedings are no longer warranted because of needed tariff modifications to implement the court's decision.

³ *Supplemental Designation Order and Order to Show Cause*, DA 94-556 (rel. May 31, 1994) ("Order") at ¶ 20.

No. of Copies rec'd 049
List A B C D E

1. *How Bell Atlantic's approach to time and materials charges differs from the use of individual case basis rates.*

The time and materials provisions of Bell Atlantic's tariff are available to all those entities authorized by Commission order to collocate in the central office.⁴ By contrast, based upon long-standing Commission precedent, as the United States Court of Appeals recently found, individual case basis ("ICB") offerings are not common carrier services.⁵

In finding that the Commission has traditionally deemed ICB offerings not to constitute common carriage, the court cited language from the Local Exchange Carrier ("LEC") Price Cap Order stating unequivocally that,

ICB offerings are those offered on a contract-type basis. While ICB offerings appear in LEC tariffs, they are not tarified as generally-available common carrier services.⁶

The court further found that this statement confirmed a long-standing Commission policy. It cited a 1984 rulemaking in

⁴ The Bureau's order erroneously states that individual case basis arrangements are generally-available, common carrier offerings. Order at ¶ 17 and n.35. Bell Atlantic intends to seek clarification that this is a misstatement of Commission policy.

⁵ *See Southwestern Bell Telephone Company v. FCC*, Nos. 91-1416 *et al.* (D.C. Cir. April 5, 1994) ("Dark Fiber Decision").

⁶ *Id.*, slip op. at 18 (citing *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 at ¶ 193 (1990)).

which the Commission proposed to modify its approach to ICBs.⁷ There, the Commission stated that its existing policy was that ICBs (then called special construction lines) "are different from, and do not include, services made generally available by the carrier"⁸ and distinguished them from common carrier offerings.⁹ After receiving comments, the Commission closed the docket without changing its policy.¹⁰ Accordingly, its existing policy, articulated in both the 1984 rulemaking notice and the price cap order -- that ICB arrangements are not generally-available, common carrier services -- remains in effect.

2. *How developing prices at time of initial collocation request rather than tariffing a "menu" of prices for individual service components is justified.*

Bell Atlantic uniformly uses outside contractors in the preparation of collocation space. These contractors do not generally publish price lists. Instead, they tailor their charges to the characteristics of the job. Accordingly, when a potential collocater asks Bell Atlantic for a price estimate to prepare the space, Bell Atlantic obtains bids from its contractors and uses those estimates in the quote given to the

⁷ ***Special Construction of Lines and Special Service Arrangements Provided by Common Carriers, Notice of Proposed Rulemaking***, 97 F.C.C.2d 978 (1984).

⁸ *Id.* at 991.

⁹ *Id.* at 989-90.

¹⁰ ***Order***, 5 FCC Rcd 5410 (1990).

collocator. The contractor estimates may vary widely over time, because of such variables as the availability of labor and the costs of materials. Moreover, Bell Atlantic's experience with more than twenty collocation offices currently in operation or under construction is that there is no standard collocation arrangement -- each installation is unique. This fact, coupled with the distinctive characteristics of each central office, justifies Bell Atlantic's approach.

This situation differs from the typical pricing of a new service offering. In the usual case, Bell Atlantic either uses its own personnel and procures its own materials in offering the service or uses contractors under long-term arrangements at standard prices. As a result, Bell Atlantic has a greater degree of control over the labor rates and material prices and is able to file a justified tariff rate.

3(a). *How Bell Atlantic develops and submits pre-construction estimates.*

When Bell Atlantic receives a request from a potential collocator for a central office construction charge estimate, that request is referred to a multi-departmental internal team (including corporate real estate, security, engineering and operations) to prepare the estimate. The team solicits bids from outside contractors for the required work. Bell Atlantic then prepares a final estimate and submits it to the requestor in writing. **See** Bell Atlantic Tariff F.C.C. No. 1, Section

19.3.1(A) (3rd Revised Page 948, eff. Feb. 15, 1994) ("Tariff"). That estimate will be provided within 25 working days of receipt of the request. The estimate consists of a single dollar figure, but Bell Atlantic will provide an itemization upon request.

The requestor is given thirty days to accept the estimate by paying fifty percent of the estimated charge. *See* Tariff, Section 19.3.1(B).¹¹ The remaining payment is due when the office is accepted and the charge for that office is filed in the tariff.

3(b). *What limit should be placed on the amount by which the charges to a collocater may deviate from the pre-construction estimate?*

The estimates that Bell Atlantic provides to its customers are based upon bids obtained from contractors. Accordingly, Bell Atlantic anticipates little deviation between the final cost and the initial estimate. It would, therefore, be reasonable to cap final charges at no more than ten percent over the initial estimate, as the Bureau suggests.¹² This assumes, of course, that the collocater does not make changes to the

¹¹ Although the tariff specifies a thirty-day period, Bell Atlantic has accepted initial payments after that period so long as the contractor bids upon which the estimates are based have not changed. Bell Atlantic routinely notifies the requestor immediately of any resulting change in the estimate after 30 days but before acceptance.

¹² The Bureau Order points out that the Commission has previously imposed a ten percent cap on estimates of anticipated charges for expedited access orders. **Annual 1985 Access Tariff Filings, Phase II**, 2 FCC Rcd 1416 (1987).

construction request for which the estimate was prepared. If any changes are requested after the initial estimate, Bell Atlantic will supply the collocater with a new estimate for the changed work, and that new estimate would be subject to the 10% cap.¹³ In addition, if, as a result of a local real estate inspection or other activity outside of Bell Atlantic's control, Bell Atlantic must perform additional work to complete the construction, the cost of that work will be added to the price estimate and not included in the cap.

Accordingly, the time and material provisions of Bell Atlantic's tariff are just and reasonable and should be approved.

Respectfully submitted,

**The Bell Atlantic Telephone
Companies**

By Their Attorney


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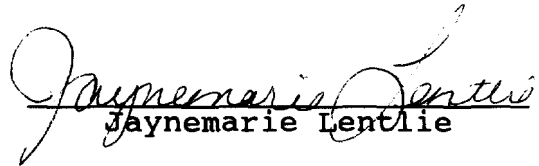
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June 15, 1994

¹³ The initial 10% cap will continue to apply to any parts of the order that are not changed.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Supplemental Direct Case" was served this 15th day of June, 1994, by first class mail, postage prepaid, on the parties on the attached list.


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